

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE UNIVERSITY OF UTAH,

Plaintiff,

v.

MAX-PLANCK-GESELLSCHAFT ZUR
FÖRDERUNG DER WISSENSCHAFTEN
e.V., a corporation organized under the
laws of Germany; MAX-PLANCK-
INNOVATION GmbH, a corporation
organized under the laws of Germany;
WHITEHEAD INSTITUTE FOR
BIOMEDICAL RESEARCH, a Delaware
corporation; MASSACHUSETTS
INSTITUTE OF TECHNOLOGY, a
Massachusetts corporation; UNIVERSITY
OF MASSACHUSETTS, a Massachusetts
corporation; and ALNYLAM
PHARMACEUTICALS, INC., a Delaware
corporation,

Defendants.

Civil Action No. 1:11-cv-10484

ORAL ARGUMENT REQUESTED

**DEFENDANTS' MOTION TO DISMISS THE UNIVERSITY OF UTAH'S
FIRST AMENDED COMPLAINT**

For the reasons stated in the accompanying Memorandum in Support of Defendants' Motion to Dismiss the University of Utah's First Amended Complaint, defendants Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V., Max-Planck-Innovation GmbH, Whitehead Institute for Biomedical Research, Massachusetts Institute of Technology, and Alnylam Pharmaceutical, Inc. (collectively, the "Moving Defendants") move to dismiss the University of Utah's First Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure. All of the University of Utah's claims against the Moving Defendants fail to state a claim for relief and thus should be dismissed.

Additionally, the Moving Defendants hereby join in the University of Massachusetts' ("UMass") separately filed Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. This Court does not have jurisdiction over the University of Utah's claims against UMass. Because UMass is an indispensable party to this case as a co-owner of the Tuschl II Patents, the University of Utah's entire case, including its claims against the Moving Defendants, should be dismissed.

Request for Oral Argument

Pursuant to Local Rule 7.1(d), the Moving Defendants hereby request oral argument on this Motion.

Respectfully submitted,

Max-Planck-Gesellschaft zur Förderung der
Wissenschaften e.V.;
Max-Planck-Innovation GmbH;
Whitehead Institute for Biomedical Research;
Massachusetts Institute of Technology;
and
Alnylam Pharmaceuticals, Inc.

By their attorneys,

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Dated: October 31, 2011

Certificate Pursuant to Local Rule 7.1(a)(2)

I, Thomas F. Maffei, hereby certify that counsel conferred and attempted in good faith to resolve or narrow the issues raised herein.

/s/ Thomas F. Maffei

Thomas F. Maffei

Certificate of Service

I, Thomas F. Maffei, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 31, 2011.

/s/ Thomas F. Maffei

Thomas F. Maffei